IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4614 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SALIM HANIF SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4614 of 2002

MR AR SHAIKH for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 09.3.2002 passed against him by the

Commissioner of Police, Surat, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as "bootlegger" within the meaning of Section 2(b) of the PASA At.

2. The order of detention has been challenged on number of grounds. However, ld. counsel appearing for the petitioner has concentrated arguments mainly on one ground and it is submitted that the order of detention has been passed without proper application of mind and in mechanical exercise of the powers the petitioner has been detained and the same is violative of the protection enshrined under Article 22(5) of the Constitution of India. The petitioner is involved in the offence punishable under the Bombay Prohibition Act and offence has been registered with Pandesara Police Station being CR No. II 78/2002. The detaining authority, for recording subjective satisfaction, has considered the statements of two un-named witnesses. Ld. counsel Ms. Banna Datta for ld. counsel Mr. A.R.Shaikh for the petitioner has submitted that certain dates reflected in the papers served to the detenu has created a confused situation and this situation clearly indicates that the order of detention is passed mechanically and if it is accepted that the detaining authority has accepted all these papers in correct perspective, then this confused reference of various dates has prevented the detenu in making effective representation. To substantiate this submission, Ms.Datta has pointed out relevant dates reflected from the papers served to the detenu. On page-26, it is mentioned that the present detenu was arrested by Pandesara Police on 15.1.2002 at 22.30 hours. The statement of the detenu, allegedly recorded by the sponsoring authority indicates that the detenu himself was absconding since 14.1.2002 i.e. from the date on which co-accused of the crime were arrested by the police and because of fear, he has left the area namely Pandesara and ultimately, he returned on account of death of his father and after some days, he was ultimately arrested on 27.1.2002. This statement is at page-58 of the compilation. Page-60 is the zerox copy of the bail application and order passed thereon which indicates that bail application was preferred by the petitioner on 31.1.2002 and the order indicates that this application was granted by the Court on 18.1.2002, which is absolutely not possible. It is likely that the order might have been passed on 18.2.2002 instead of 18.1.2002 or on the any date in the month of February, 2002 viz. it may be 1st, 8th or 18th of February, 2002. But when

the sponsoring authority has placed the papers to the effect that the petitioner was absconding since 14.1.2002 and has been arrested on 27.1.2002, how he could have given threats to the un-named witness on 24.1.2002 whose statement is at page 64 ? This witness has stated that on 24.1.2002 at about 7.00 P.M., the present petitioner along with co-accused has pulled out the witness out of auto-rickshaw and the co-accused Lalsingh had given threats to him. Detaining authority has claimed privilege under Section 9(2) of the Act at the time of recording satisfaction. In these facts situation, how a detenu can submit the effective representation ? So, this is a case where this Court can legitimately held that the order of detention is passed without proper application of mind and, therefore, it vitiates the validity of the order of detention. Under the circumstances, it can legitimately be inferred that this is a case of non-application of mind or at least the case of of passing of the order mechanically without ascertaining the trustworthiness of the witnesses whose statements are placed before the authority. This vitiates the validity of the order and, therefore, the detention shall have to be turned down solely on this ground. Of course, the other ground is also available to the petitioner that with this set of facts, the authority cannot claim privilege under Section 9(2) of the PASA Act. The observations made by this Court in the case of Bai Amina w/o Ibrahim Abdul Rahim Alla v/s State of Gujarat & Others, 22 GLR 1186 would help the case of the present petitioner. So, without going into the merits of the other grounds pleaded by the petitioner in this petition, I am inclined to allow this petition on the sole ground of non-application of mind and mechanical exercise of powers by the detaining authority.

3. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 09.3.2002 passed by the Police Commissioner, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
D.S. permitted.

2-7-2002 [C. K.BUCH, J]
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